



# California Fair Political Practices Commission

September 29, 1988

Honorable David L. Malcolm  
Councilmember  
City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 92010

Re: Your Request for Advice  
Our File No. I-88-191

Dear Councilmember Malcolm:

This is in response to your letter requesting advice regarding your responsibilities under the reporting and conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> Because your request is more of a general inquiry rather than a request for advice regarding a specific action pending before the city council, we treat your request as one for informal assistance.<sup>2/</sup>

## QUESTIONS

You are interested in selling a parcel of your real property.

1. If the purchaser, as part of the purchase agreement, assumes your existing loan, what should be reported on your statement of economic interests?

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

Honorable David L. Malcolm  
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2. How long are you required to disqualify yourself from participation in decisions affecting the purchaser of the property?

#### CONCLUSIONS

1. The purchaser of the property should be listed as a source of income to you on Schedule D of your statement of economic interest for the reporting period coinciding with the sale of the property. Your interest in the real property and the existing loan should also be disclosed on Schedules B and E, respectively, of this statement since both are economic interests held for a portion of the reporting period.

2. You would have to disqualify yourself from governmental decisions having a material financial effect on the purchaser of the property, who is a source of income to you, for twelve months following close of sale of the property.

#### FACTS

You own a parcel of residential real property. You have an assumable loan for the house from a commercial lending institution. You are presently planning to sell the property.

Before you sign a listing contract with provisions allowing for a loan assumption, you would like to understand your reporting and disqualification responsibilities regarding such a transaction under the Act.

#### ANALYSIS

##### Disclosure Obligations

The Act requires that officeholders file annual statements disclosing, among other things, interests in real property and income. (Section 87204.) Interests in real property include any leasehold, beneficial or ownership interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official or his or her immediate family if the fair market value of the interest is one thousand dollars (\$1,000) or more. (Section 82033.)

Income is defined in Section 82030 to include proceeds from any sale. It also means a loan, and forgiveness or payment of indebtedness received by the filer.

When you first purchased the real property in question, you established an ownership interest in real property. When you

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received the loan on the property from the commercial lending institution, you retained your interest in the real property and the lending institution became a source of income to you, with the residence as security for the loan.

Once you sell the real property, barring any contract provisions to the contrary, you have relinquished your ownership interest in the real property. The purchaser becomes the legal owner of the property. If the purchaser assumes your loan on the residence, he or she becomes the principal obligor to the lending institution, and the residence remains the security for the loan. You are then in the position of surety, which means that the lending institution may look to you for a deficiency only after the sale of the property. (See Everts v. Matteson (1942) 21 Cal. 2d. 437.)

For reporting purposes, you are currently required to disclose ownership interest in the real property and to report the existing loan as a source of income in the annual reports filed for the period up to and including the year during which you sell the real property. Should you sell the property, you would also have to report the purchaser of the property as a source of income in the amount of the full purchase price of the residence in the report covering the year in which you sell the property.

For example, if the house is sold in November 1988, you would report the real property interest and the existing loan on the house in your 1988 annual report (Schedule B and E, respectively) and report the purchaser of the house as a source of income in that same report (Schedule D). Because your ownership interest expired in 1988 you would not have to report the interest in the home thereafter. Moreover, assuming that this is the only financial transaction in which you and the purchaser of the property are involved, the 1988 report is the only time you would be required to list the purchaser as a source of income.

As was noted before, the relationship of the seller of real property with the lending institution, where the loan has been assumed by the purchaser, is as surety on the loan. The lender is required by law to look to the real property for satisfaction of the loan should the purchaser of the property default. (Code of Civil Procedure Section 726.) Depending on the language of the purchase agreement, the lender may be prohibited from seeking a deficiency judgment after a foreclosure proceeding. (Code of Civil Procedure Sections 580b

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and 580d.) Thus, the surety may have little or no legal obligation to the lending institution.

Consequently, we conclude that a public official who sells real property with a loan assumption has no obligation to report his or her continued relationship to the lending institution once the loan is assumed.

#### Disqualification Obligations

The Act requires that you not participate in any governmental decision in which you have a financial interest. (Section 87100.) An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family, or on:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

#### Section 87103 (b and (c)).

As was discussed previously, once the residence is sold, even where the original mortgage is assumed, a public official no longer has an interest in the real property. (Section 82033.) Thus, the restrictions of Section 87103(b) would not apply once sale of the property has been accomplished.

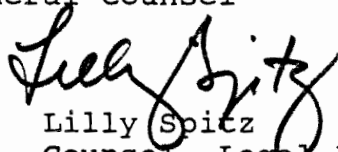
Section 82030 includes "proceeds from any sale" in the definition of income. Consequently, the purchaser of the residence would become a source of income to you. Section 87103(c) requires, therefore, that you refrain from participating in governmental decisions which would have a material financial effect, distinguishable from its effect on the public generally, on the purchaser of the real property. This prohibition would remain in effect for twelve months from the time of the sale of the property.

Honorable David L. Malcolm  
September 29, 1988  
Page 5

I trust that this analysis provides you with the assistance you require. If you have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Lilly Spitz  
Counsel, Legal Division

DMG:LS:plh



AUG 3 12 18 PM

August 2, 1988

Fair Political Practices Commission  
Lilly Spitz  
488 "J" Street, Suite 800  
Sacramento, California 95804-0807

Dear Ms. Spitz:

Enclosed you will find an exclusive authorization and right to sell listing agreement which is the California Department of Real Estate approved form. However, on this form the question of loan assumability is not discussed. It is the requirement of the real estate agent to determine the loan assumability and to place it on the form that was previously supplied to you. Since my loan is assumable, the real estate broker would acknowledge its assumability on the form previously supplied to you (provided I consent to the loan assumption). From the information given to me, there are no forms that deal specifically with assumability. As stated above, the department of real estate has left that up to the real estate agent to determine and to disclose on the previously supplied form.

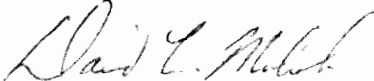
Regarding your second question, the loan is with a commercial lending institution. There are no unique provisions or requirements in note. (I fail to see the difference between a private vs. commercial loan. The deficiency laws of the state of California are the same on both).

Please disregard the question asked in my June 22 letter.

~~Hopefully if you have any further questions you will feel free to call me (619) 425-7080 and I will respond immediately to any requested information, documentation etc.~~

Again, thank your cooperation in this matter.

Sincerely,

  
David Malcolm



## EXCLUSIVE AUTHORIZATION AND RIGHT TO SELL

### MULTIPLE LISTING AUTHORIZATION

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT — READ IT CAREFULLY.

CALIFORNIA ASSOCIATION OF REALTORS® (CAR) STANDARD FORM.

1 **EXCLUSIVE RIGHT TO SELL:** I hereby employ and grant \_\_\_\_\_ hereinafter called "Broker," the exclusive and irrevocable right commencing on \_\_\_\_\_, 19\_\_\_\_\_, and expiring midnight on \_\_\_\_\_, 19\_\_\_\_\_, to sell or exchange the real property situated in the city of \_\_\_\_\_ County of \_\_\_\_\_, California described in the attached information sheet and as follows: \_\_\_\_\_

2 **TERMS OF SALE:** The purchase price shall be \_\_\_\_\_ (\$ \_\_\_\_\_), to be paid as follows \_\_\_\_\_

The following items of personal property are included in the above stated price: \_\_\_\_\_

3 **MULTIPLE LISTING SERVICE (MLS):** Broker is a participant of \_\_\_\_\_ BOARD OF REALTORS® Multiple Listing Service (MLS) and this listing information will be provided to the MLS to be published and disseminated to its participants. The Broker is authorized to appoint subagents and to report the sale, its price, terms and financing for the publication, dissemination, information and use by authorized Board members, MLS Participants and subscribers.

4 **TITLE INSURANCE:** Evidence of title shall be a California Land Title Association standard coverage policy of title insurance in the amount of the selling price.

**Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between the Seller and Broker.**

5 **COMPENSATION TO BROKER:** I hereby agree to compensate Broker as follows:

- (a) \_\_\_\_\_ percent of the selling price, or \$ \_\_\_\_\_ if the property is sold during the term hereof, or any extension thereof, by Broker on the terms herein set forth or any other price and terms I may accept, or through any other person, or by me or \_\_\_\_\_ percent of the price shown in 2, or \$ \_\_\_\_\_, if said property is withdrawn from sale, transferred, conveyed, leased, rented without the consent of Broker, or made unmarketable by my voluntary act during the term hereof or any other extension thereof.
- (b) the compensation provided for in subparagraph (a) above if property is sold, conveyed or otherwise transferred within \_\_\_\_\_ calendar days after the termination of this authority or any extension thereof to anyone with whom Broker has had negotiations prior to final termination, provided I have received notice in writing, including the names of the prospective purchasers, before or upon termination of this agreement or any extension hereof. However, I shall not be obligated to pay the compensation provided for in subparagraph (a) if a valid listing agreement is entered into during the term of said protection period with another licensed real estate broker and a sale, lease or exchange of the property is made during the term of said valid listing agreement.
- (c) I authorize Broker to cooperate with other Brokers, to appoint subagents, and to divide with other Brokers such compensation in any manner acceptable to Brokers.
- (d) In the event of an exchange, permission is hereby given Broker to represent all parties and collect compensation or commission from them, provided there is full disclosure to all principals of such agency. Broker is authorized to divide with other Brokers such compensation or commissions in any manner acceptable to Brokers.
- (e) If requested by Broker, Seller shall execute and deliver an escrow instruction irrevocably assigning Broker's compensation in an amount equal to the compensation provided in subparagraph (a) (above) from the Seller's proceeds.

6 **DEPOSIT:** Broker is authorized to accept and hold on seller's behalf a deposit on the account of the purchase price.

7 **HOME PROTECTION PLAN:** Seller is informed that home protection plans are available. Such plans may provide additional protection and benefit to a Seller and Buyer. Cost and coverage may vary.

8 **KEYBOX:** I authorize Broker to install a KEYBOX:

(Initial) YES (\_\_\_\_/\_\_\_\_) NO (\_\_\_\_/\_\_\_\_)

Refer to reverse side for important keybox information.

9 **SIGN:** Authorization to install a FOR SALE/SOLD sign on the property:

(Initial) YES (\_\_\_\_/\_\_\_\_) NO (\_\_\_\_/\_\_\_\_)

10 **PEST CONTROL:** Seller shall furnish a current Structural Pest Control Report of the main building and all structures of the property, except \_\_\_\_\_

(Initial) YES (\_\_\_\_/\_\_\_\_) NO (\_\_\_\_/\_\_\_\_)

Seller shall provide a Real



**KEYBOX:** A keybox designed as a repository of a key to the above premises, will permit access to the interior of the premises by Participants of the Multiple Listing Service (MLS), their authorized licensees and prospective buyers. If property is not seller occupied, seller shall be responsible for obtaining occupants' written permission for use of the keybox. Neither listing nor selling broker, MLS or Board of REALTORS® is an insurer against theft, loss, vandalism or damage attributed to the use of keybox. SELLER is advised to verify the existence of, or obtain appropriate insurance through their own insurance broker.

**DISCLOSURE:** Sellers of real property should be aware of their disclosure obligations under the California Court Cases, Statutes and Real Estate Law commentaries excerpted or paraphrased below:

**SELLER DISCLOSURE OBLIGATIONS  
UNDER CIVIL CODE SECTION 1102, ET SEQ.**

Effective January 1, 1987, a transferor (seller) of real property including a residential stock cooperative containing 1 to 4 residential units (unless exempted under § 1102.1) must supply a transferee (buyer) with a completed Real Estate Transfer Disclosure Statement in the form prescribed in Civil Code § 1102.6.

**EXEMPTED TRANSFERS:** Summary of exempted transfers (Civil Code Section 1102.1) where Real Estate Transfer Disclosure Statement is not required:

- a. Transfers requiring "a public report pursuant to § 11018.1 of the Business & Professions Code" and transfers pursuant to § 11010.4 of Business & Professions Code where no public report is required;
- b. "Transfers pursuant to court order" (such as probate sales, sales by a bankruptcy trustee, etc.);
- c. Transfers by foreclosure (including a deed in lieu of foreclosure and a transfer by a beneficiary who has acquired the property by foreclosure or deed in lieu of foreclosure);
- d. "Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust."
- e. "Transfers from one co-owner to one or more other co-owners."
- f. "Transfer made to a spouse" or to a direct blood relative;
- g. "Transfers between spouses" in connection with a dissolution of marriage or similar proceeding;
- h. Transfers by the State Controller pursuant to the Unclaimed Property Law;
- i. Transfers as a result of failure to pay property taxes;
- j. "Transfers or exchanges to or from any government entity."

**TIMING OF DISCLOSURE AND RIGHT TO CANCEL (CIVIL CODE SECTION 1102.2):**

- a. In the case of a sale, the disclosures to the buyer shall be made "as soon as practicable before transfer of title."
- b. "In the case of transfer by a Real Property Sales Contract, (Installment Land Sales Contract) . . . or, by a lease together with an option to purchase, or ground lease coupled with improvements, as soon as practical before . . . the making or acceptance of an offer."

"If any disclosure, or any material amendment of any disclosure, required to be made by this article, is delivered after the execution of an offer to purchase, the transferee shall have three days after delivery in person or five days after delivery by deposit in the mail, to terminate his or her offer by delivery of a written notice of termination to the transferor of the transferor's agent."

**SUBSTITUTED DISCLOSURES (CIVIL CODE SECTION 1102.4):**

- a. Neither the transferor nor any listing or selling agent shall be liable for any error, inaccuracy, or omission of any information delivered pursuant to this article if the error, inaccuracy, or omission was not within the personal knowledge of the transferor or that listing or selling agent, was based on information timely provided by public agencies or by other persons providing information as specified in subdivision (c) that is required to be disclosed pursuant to this article, and ordinary care was exercised in obtaining and transmitting it.
- b. The delivery of any information required to be disclosed by this article to a prospective transferee by public agency or other person providing information required to be disclosed pursuant to this article shall be deemed to comply with the requirements of this article and shall relieve the transferor or any listing or selling agent of any further duty under this article with respect to that item of information.
- c. The delivery of a report or opinion prepared by a licensed engineer, land surveyor, geologist, structural pest control operator, contractor, or other expert, dealing with matters within the scope of the professional's license or expertise, shall be sufficient compliance for application of the exemption provided by subdivision (a) if information is provided to the prospective transferee pursuant to a request therefor, whether written or oral. In responding to such a request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of Section 1102.6 and, if so, shall indicate the required disclosures, or parts thereof, to which the information being furnished is applicable. Where such a statement is furnished, the expert shall not be responsible for any items of information, or parts thereof, other than those expressly set forth in the statement.

**OTHER DISCLOSURE REQUIREMENTS**

" . . . the nature and desirability of the property which are known or accessible only to him





JUN 24 1 41 PM '88

June 22, 1988

California  
Fair Political  
Practices Commission  
Lilly Spitz  
428 J. Street, Suite 800  
Sacramento, California 95804-0807

Re: Request for Advice  
File No. 88-191

Dear Ms. Spitz;

The property in question is a home I own and not my personal residence. The ownership is held personally and is a residential property.

I have enclosed a copy of the Single Family Detached Listing Input form. I highlighted the portions questioning the existing loan status. You will note that one of the questions is the total assumable balance on the trust deeds. Your answer to my question will determine the amount I will allow the listing agent to insert into that section. I plan on selling this property through escrow with conveyance by a grant deed. I do not plan on taking a second trust deed or have any interest in the property after sale.

I would also request your opinion on my personal residence. I obtained a loan on my residence about one year after purchase of the property. The present interest rate makes the loan very attractive to be assumed. Would your answer apply to this property also?

I hope this information will allow you to answer my request for advice in an expeditious manner.

Thank you for your consideration in addressing this very important concern.

Sincerely,

*David L. Malcolm by RH*  
David L. Malcolm



# California Fair Political Practices Commission

June 13, 1988

Honorable David L. Malcolm  
Councilmember  
City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 92010

Re: Your Request for Advice  
Our File No. 88-191

Dear Councilmember Malcolm:

I am writing to request additional information to clarify your request for advice referenced above.

In your letter you note that you purchased a piece of property and later obtained a loan on the property. You now would like to list the property for sale. You ask what your reporting requirements would be under the Political Reform Act if the purchaser of the property assumed your loan on the property.

Two points of clarification would be helpful to our analysis:

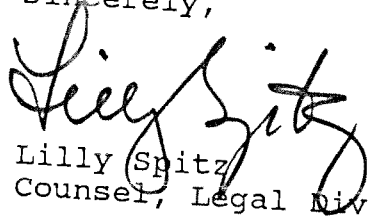
1. Initially, you describe the real property as "a piece of property" you purchased several years ago. However, in your question you refer to the property as your "home". Is the property in question your residence? If not, is the property commercial or residential? Is the property a personal investment or a business investment? If a business investment, what is your interest in the business?

2. As you are aware, there are numerous contracting mechanisms utilized for real property transfers. You referred to a listing contract in your letter which asks if you would allow the existing loan to be assumed by the buyer. In order to be as precise as possible in our analysis, we would like to have the opportunity to review the listing contract and any other relevant documents which could shed light on the economic relationship which would exist should you decide to sell the property and allow the buyer to assume your loan. We would appreciate your forwarding any such documents at your earliest convenience.

Honorable David L. Malcolm  
June 13, 1988  
Page 2

If you have any questions regarding this request, you may  
call me at (916) 322-5901.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lilly Spitz".

Lilly Spitz  
Counsel, Legal Division

LS:plh

# SINGLE FAMILY DETACHED LISTING INPUT FORM

PROPERTY TYPE **1**

☐ EAST SAN DIEGO COUNTY ☐ SAN DIEGO ☐ SOUTH SAN DIEGO BAY CITIES

(R)—Required (S)—Searchable



☐ SOLD BEFORE SUBMITTED  
☐ OFFICE EXCLUSIVE  
☐ SUPPLEMENT

**LO** (R) LIST OFFC# \_\_\_\_\_ OFFICE NAME \_\_\_\_\_ OFFICE PHONE \_\_\_\_\_  
**LAG** (R) LIST AGENT# \_\_\_\_\_ AGENT NAME \_\_\_\_\_ **APH** (R) AGENT PHONE \_\_\_\_\_  
**COP** NO. OF COPIES (100,200,300) \_\_\_\_\_ APPROVED BY \_\_\_\_\_ DATE \_\_\_\_\_  
LISTING NO. \_\_\_\_\_ TRANSACTION NO. \_\_\_\_\_

**LP** (R)(S) LIST PRICE \_\_\_\_\_ **LD** (R)(S) LIST DATE \_\_\_\_\_ **XD** (R)(S) EXPIRE DATE \_\_\_\_\_ **CSO** (R) % COMP. or \$ COMP. TO SELLING OFFICE \_\_\_\_\_ **ORD** \_\_\_\_\_ **LTP** (R) LIST TYPE (ER, EA, OP) \_\_\_\_\_  
**AD** (R)(S) ADDRESS (HOUSE #) \_\_\_\_\_ STREET NAME \_\_\_\_\_ **MAP** (R)(S) MAP CODE \_\_\_\_\_ **XY** \_\_\_\_\_  
**LOC** (S) PROPERTY LOCATION \_\_\_\_\_ **ZON** ZONING \_\_\_\_\_ **LBX** (R) LOCKBOX \_\_\_\_\_  
**CIT** CITY \_\_\_\_\_ **ZIP** (R) ZIP CODE \_\_\_\_\_ **AR** (R)(S) (AREA) ZIP \_\_\_\_\_ **SF** (S) SQUARE FEET OF HOME \_\_\_\_\_  
**BR** (R)(S) BEDROOMS \_\_\_\_\_ **BA** (R)(S) BATHS \_\_\_\_\_ **FR** (S) FAM RM \_\_\_\_\_ **STR** (S) STORIES \_\_\_\_\_ **AGE** (S) AGE \_\_\_\_\_ **HOF** (S) HOME OWNER FEE \_\_\_\_\_  
**PAR** (S) PARCEL NUMBER \_\_\_\_\_ **LSZ** (S) LOT SIZE DIMENSIONS \_\_\_\_\_ **ACR** (S) NO. OF ACRES (APX) \_\_\_\_\_  
**OCC** OCCUPANT (O,T,V) \_\_\_\_\_ **OCP** OCCUPANT NAME \_\_\_\_\_ **OPH** OCCUPANT PHONE \_\_\_\_\_ **SHO** SHOW \_\_\_\_\_

## ROOM SIZES

**CLR** **DLR** **LR**  
CARPET (LIV RM) DRAPES LIVING ROOM SIZE  
**CDR** **DDR** **DR**  
CARPET (DIN RM) DRAPES DINING ROOM SIZE  
**CKI** **DKI** **KIT**  
CARPET (KIT) DRAPES KITCHEN SIZE  
**CFR** **DFR** **FAM**  
CARPET (FR) DRAPES FAMILY ROOM SIZE  
**CB1** **DB1** **BR1**  
CARPET (BR1) DRAPES BEDROOM 1 SIZE  
**CB2** **DB2** **BR2**  
CARPET (BR2) DRAPES BEDROOM 2 SIZE  
**CB3** **DB3** **BR3**  
CARPET (BR3) DRAPES BEDROOM 3 SIZE  
**CB4** **DB4** **BR4**  
CARPET (BR4) DRAPES BEDROOM 4 SIZE  
**CXR** **DXR** **XRM**  
CARPET (XRM) DRAPES EXTRA ROOM SIZE  
**FNC**  
FENCED  
**PT**  
PATIO

**POS** POSSESSION  
**LDY** LAUNDRY  
**TB** (S) TOTAL ASM BALANCE  
**TM** (S) TOTAL ASM MONTHLY  
**CTA** (S) CASH TO ASSUME  
**1LD** 1ST TD LENDER NAME  
**1PC** 1ST TD PERCENT %  
**1ST** 1ST TD \$ AMOUNT  
**1DU** 1ST TD DUE DATE  
**1PM** 1ST TD PAYMENT  
**1TI** 1ST TD TAX & INS  
**1LN** 1ST TD LOAN #

**1TP** 1ST TD TYPE  
**2LD** 2ND TD LENDER NAME  
**2PC** 2ND TD PERCENT %  
**2ND** 2ND TD \$ AMOUNT  
**2DU** 2ND TD DUE DATE  
**2PM** 2ND TD PAYMENT  
**2TP** 2ND TD TYPE  
**3RD** 3RD TD \$ AMOUNT  
**3DU** 3RD TD DUE DATE  
**3PM** 3RD TD PAYMENT  
**3TP** 3RD TD TYPE  
**AST** ASSESSMENTS

*AMT. THAT CAN BE ASSUMED.*

**RM1** REMARKS LINE 1 (64 CHARACTERS)

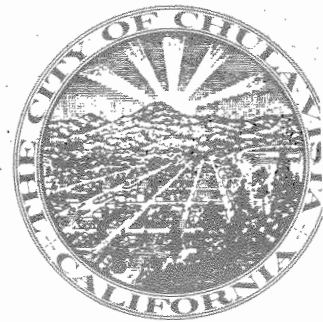
**RM2** REMARKS LINE 2 (64 CHARACTERS)

**RM3** REMARKS LINE 3 (64 CHARACTERS)

**RM4** REMARKS LINE 4 (64 CHARACTERS)

# City of Chula Vista, California

MAY 23 6 53 AM '88



OFFICE of the CITY COUNCIL

May 19, 1988

Fair Political Practice Commission  
P. O. Box 807  
Sacramento, California 95804-0807

Dear Sir or Madam:

Several years ago I purchased a piece of property. About ten months after the purchase I obtained a loan on the property. I am presently planning to sell the property. The listing contract asks if I would allow the existing loan to be assumed by the buyer. Before I sign a listing agreement and proceed with the sale I need written advise from the FPFC on what my reporting requirements and voting restrictions will be upon sale.

If a buyer purchases my home subject to the existing loan how must I report this transaction on my form 721? How long must I abstain in voting on any related property or interest the purchaser might own? The buyer would put a large down payment in order to buy the home and assume the loan. For example, a sales price of \$160,000.00 with cash down to me of approximately \$77,000.00 and the assumption by the buyer of the existing loan in the amount of \$83,000.00.

Your prompt attention in this matter will be greatly appreciated. I do need to market this property and I will not contractually bind myself until I receive a response from our agency.. Please respond as soon as possible.

Sincerely,

A handwritten signature in dark ink, appearing to read "David L. Malcolm".

David L. Malcolm  
Councilman



AUG 3 12 18 PM

August 2, 1988

Fair Political Practices Commission  
Lilly Spitz  
488 "J" Street, Suite 800  
Sacramento, California 95804-0807

Dear Ms. Spitz:

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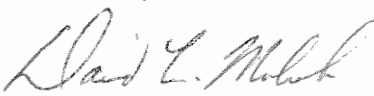
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Please disregard the question asked in my June 22 letter.

Hopefully if you have any further questions you will feel free to call me (619) 425-7080 and I will respond immediately to any requested information, documentation etc.

Again, thank your cooperation in this matter.

Sincerely,

  
David Malcolm



# EXCLUSIVE AUTHORIZATION AND RIGHT TO SELL

## MULTIPLE LISTING AUTHORIZATION

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT — READ IT CAREFULLY.

CALIFORNIA ASSOCIATION OF REALTORS® (CAR) STANDARD FORM

1. **EXCLUSIVE RIGHT TO SELL:** I hereby employ and grant \_\_\_\_\_ hereinafter called "Broker," the exclusive and irrevocable right commencing on \_\_\_\_\_, 19\_\_\_\_\_, and expiring at midnight on \_\_\_\_\_, 19\_\_\_\_\_, to sell or exchange the real property situated in the city of \_\_\_\_\_, County of \_\_\_\_\_, California described in the attached information sheet and as follows: \_\_\_\_\_

2. **TERMS OF SALE:** The purchase price shall be \_\_\_\_\_ (\$ \_\_\_\_\_), to be paid as follows \_\_\_\_\_

The following items of personal property are included in the above stated price: \_\_\_\_\_

3. **MULTIPLE LISTING SERVICE (MLS):** Broker is a participant of \_\_\_\_\_ BOARD OF REALTORS® Multiple Listing Service (MLS) and this listing information will be provided to the MLS to be published and disseminated to its participants. The Broker is authorized to appoint subagents and to report the sale, its price, terms and financing for the publication, dissemination, information and use by authorized Board members, MLS Participants and subscribers.

4. **TITLE INSURANCE:** Evidence of title shall be a California Land Title Association standard coverage policy of title insurance in the amount of the selling price.

**Notice:** The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between the Seller and Broker.

5. **COMPENSATION TO BROKER:** I hereby agree to compensate Broker as follows:

- (a) \_\_\_\_\_ percent of the selling price, or \$ \_\_\_\_\_ if the property is sold during the term hereof, or any extension thereof, by Broker on the terms herein set forth or any other price and terms I may accept, or through any other person, or by me, or \_\_\_\_\_ percent of the price shown in 2, or \$ \_\_\_\_\_, if said property is withdrawn from sale, transferred, conveyed, leased, rented without the consent of Broker, or made unmarketable by my voluntary act during the term hereof or any other extension thereof.
- (b) the compensation provided for in subparagraph (a) above if property is sold, conveyed or otherwise transferred within \_\_\_\_\_ calendar days after the termination of this authority or any extension thereof to anyone with whom Broker has had negotiations prior to final termination, provided I have received notice in writing, including the names of the prospective purchasers, before or upon termination of this agreement or any extension hereof. However, I shall not be obligated to pay the compensation provided for in subparagraph (a) if a valid listing agreement is entered into during the term of said protection period with another licensed real estate broker and a sale, lease or exchange of the property is made during the term of said valid listing agreement.
- (c) I authorize Broker to cooperate with other Brokers, to appoint subagents, and to divide with other Brokers such compensation in any manner acceptable to Brokers.
- (d) In the event of an exchange, permission is hereby given Broker to represent all parties and collect compensation or commissions from them, provided there is full disclosure to all principals of such agency. Broker is authorized to divide with other Brokers such compensation or commissions in any manner acceptable to Brokers.
- (e) If requested by Broker, Seller shall execute and deliver an escrow instruction irrevocably assigning Broker's compensation in an amount equal to the compensation provided in subparagraph (a) (above) from the Seller's proceeds.

6. **DEPOSIT:** Broker is authorized to accept and hold on sellers behalf a deposit on the account of the purchase price.

7. **HOME PROTECTION PLAN:** Seller is informed that home protection plans are available. Such plans may provide additional protection and benefit to a Seller and Buyer. Cost and coverage may vary.

8. **KEYBOX:** I authorize Broker to install a KEYBOX: (Initial) YES (\_\_\_\_/\_\_\_\_) NO (\_\_\_\_/\_\_\_\_)  
Refer to reverse side for important keybox information.

9. **SIGN:** Authorization to install a FOR SALE/SOLD sign on the property: (Initial) YES (\_\_\_\_/\_\_\_\_) NO (\_\_\_\_/\_\_\_\_)

10. **PEST CONTROL:** Seller shall furnish a current Structural Pest Control Report of the main building and all structures of the property, except \_\_\_\_\_ (Initial) YES (\_\_\_\_/\_\_\_\_) NO (\_\_\_\_/\_\_\_\_)

11. **DISCLOSURE:** Seller's disclosure obligations are set forth on the reverse side. Seller shall provide a Real

Statement regarding the condition of the property. I agree to save and hold

deliver as required any instrument, affidavit or statement to carry out the provisions of FIRPTA. Under the Foreign Investment in Real Property Tax Act (FIRPTA), IRC 1445, every Buyer of U.S. real property must, unless an exemption applies, deduct and withhold from Seller's proceeds ten percent (10%) of the gross sales price. The primary exemptions are: No withholding is required if (a) Seller provides Buyer with an affidavit under penalty of perjury, that Seller is not a foreign person, or (b) provides Buyer with a "qualifying statement" issued by the Internal Revenue Service, or (c) if Buyer purchases real property for use as a residence and the purchase price is \$300,000.00 or less and if Buyer or a member of Buyer's family has definite plans to reside at the property for at least 50% of the number of days it is in use during each of the first two twelve-month periods after transfer. Seller agrees to execute and

[The Above is a general statement of the seller disclosure obligations. Other disclosure may be required].

Transactions p. 483 (Cal. C.E.B. 1967).  
IX Exculpatory Clauses: "It is better for the seller to disclose the specific condition than to attempt to exculpate himself against it nondisclosure. In general, the exculpatory (e.g., "as is") clause provides little, if any, protection." California Real Estate Sales  
VIII "A buyer who has been defrauded by the seller has the choice of either (A) Using the seller's fraud as a basis for an action for affirmative relief in the form of an action for damages or for rescission of the contract."  
Seller to say nothing because all is not asked. California Real Estate Sales Transactions p. 483 (Cal. C.E.B. 1967).